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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Carrie Ferrara Clark,)
)
Plaintiff,)
) CV-14-2543-TUC-CKJ
vs.)
) Tucson, Arizona
City of Tucson,) April 1, 2019
) 4:16 p.m.
Defendant.)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
EXCERPT JURY TRIAL DAY ONE - DEFENSE OPENING STATEMENT
BEFORE: THE HONORABLE CINDY K. JORGENSON
UNITED STATES SENIOR DISTRICT JUDGE

APPEARANCES
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Proceedings Reported by Stenographic Court Reporter
Transcript Prepared by Computer-Aided Transcription

1 P R O C E E D I N G S

2 (Reporter's note: Beginning of requested proceedings
3 commenced at 4:16 p.m., as follows:)

4 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

5 MS. WATERS: Most of life is what you make it. The
6 plaintiff would like you to think that this case is about the
7 City of Tucson not following federal law. But actually what
8 you're going to find is that it's about the City of Tucson and
9 the fire department specifically not doing what plaintiff
10 wanted. Federal law creates a floor, and cities and other
11 employers must make sure that their actions comply with the
12 floor. But what Carrie requested from TFD wasn't the floor;
13 what she requested was the ceiling.

14 You'll hear from a number of administrators of the
15 Tucson Fire Department who will tell you that they made every
16 effort to accommodate Paramedic Clark within the rules that
17 they have to abide by. You will hear that from one person
18 after another. And they will probably tell you that
19 eventually they were frustrated themselves by the process
20 because they felt like they were bending over backward to make
21 Ms. Clark happy and that nothing they did was good enough.

22 To really understand this case, you have to
23 appreciate two things. First, you have to appreciate what it
24 is like to operate within a structure like a fire department.
25 The Tucson Fire Department, like all fire departments, police

1 agencies, is a hierarchical organization. People exist based
2 on their rank, seniority matters, and if you're talking to
3 someone who is an officer superior to you, you do not have the
4 luxury of engaging with them the way you would with someone of
5 an equal rank. That doesn't mean much to most people. Most
6 people have never worked in an environment like that. Unless
7 you've served in the military or you've worked in a similar
8 organization, it is hard to appreciate exactly what it means
9 to know that the way you engage with the person standing
10 across from you depends on whether they are above you in rank,
11 below you, or equal to you. Those rules define the human
12 interactions that take place within the fire department.

13 You also have to appreciate that the fire department
14 is an organization with a strong union. And most of the rules
15 that the fire department applies to its employees are the
16 result of a long negotiation process between the department
17 and union representatives. The fact that these rules come
18 from this negotiated process means that oftentimes
19 administrators' hands are tied. Even if they would like to
20 deviate from the rules they often cannot. The administrators
21 you'll hear from will tell you they're fully aware that if
22 they deviate from their rules with respect to one employee,
23 they're going to upset 10 or 15 others; and in all likelihood
24 they'll have union representatives in their laps by the end of
25 the day asking why they have done whatever action they've

1 taken. Now, that doesn't mean that the fire department didn't
2 make efforts to accommodate Ms. Clark in this case. You'll
3 hear that they did. They actually made extreme efforts. But
4 they had to make those efforts and make the decisions within a
5 structured set of rules, and you'll hear all about those.

6 The plaintiff would like to make this case about TFD
7 not giving her what she wanted, but we have to stop and
8 consider what did Ms. Clark herself do and what did she not
9 do. So here are a few things that's important for you to
10 know.

11 Before Ms. Clark ever came back from her maternity
12 leave, she contacted the Battalion 1 chief, Paul McDonough,
13 and she talked with him about an appropriate station
14 assignment for her. She knew that she was on swing shift.
15 She knew that she didn't have the seniority as a paramedic to
16 be able to bid on a permanent station assignment and win.

17 You'll find out that where -- which station you are
18 assigned to within TFD is decided by a bidding process. And
19 if someone who has more years in your rank than you have makes
20 a bid for that spot, they win the bid. It is all about
21 seniority. These are called the rules of assignment, and
22 they're one of the primary rules that have been carefully
23 negotiated between the department and the union representing
24 the firefighters. The rules of assignment are designed to
25 provide transparency to the assignment process and to make it

1 fair for everyone.

2 So Ms. Clark, upon approaching the end of her first
3 maternity leave, knew that she did not have the seniority to
4 win a bid. She contacted Paul McDonough and she asked, Is
5 there a place that I can go? She explained to him that she
6 would need to pump breast milk when she came back to work.
7 And Battalion Chief McDonough, you'll hear, did everything he
8 could to accommodate her. Before she ever came back from
9 maternity leave, he worked out an arrangement where she could
10 go and be permanently assigned or at least assigned for a
11 long-term period of time to Station 20.

12 Now, you'll hear that Station 20 is one of the
13 nicest, newest stations that the Tucson Fire Department has
14 available. It has private dorm rooms for every firefighter
15 and paramedic that have locks on the doors, no windows.
16 Battalion Chief McDonough thought it would be a really perfect
17 place for Ms. Clark to go when she returned from her maternity
18 leave, and initially Ms. Clark agreed with him. So when
19 Ms. Clark came back from her maternity leave, she had a place
20 to go. Station 20. She would have had a room that was hers
21 that she could have cleaned, maintained, kept her materials
22 in, that would have been a locking room, free from intrusion,
23 and no one else would have been using it.

24 But when she came back, she worked her first shift
25 at Station 12. Station 20 is located at River Road and First

1 Avenue. Station 12 is located on the far east side of Tucson.
2 When Ms. Clark came back and she worked a shift at Station 12,
3 she decided that she liked Station 12 better. It had a female
4 captain, it had another female firefighter there who was also
5 breastfeeding or had been breastfeeding. And most
6 importantly, it was close to her mother's house. Apparently
7 her mother was watching her child during the day, and she was
8 coming to the fire station to pick up the breast milk that
9 Ms. Clark was pumping while she was on duty. I imagine
10 Ms. Clark will tell you that her child did not do well in the
11 car and did not like to take long car rides across town.
12 Station 12 was substantially closer to her mother's house than
13 Station 20.

14 The problem with Station 12 is that there was no
15 place for her there. She had been assigned to work at
16 Station 12 on the swing shift when there was an opening.
17 Having worked there once, she went to Battalion Chief
18 McDonough and said, you know, I appreciate all that you did
19 for me on Station 20, but I'd actually rather stay on swing
20 shift and take my chances in the hopes that I can go to
21 Station 12. That is a choice that Ms. Clark made after her
22 first shift back.

23 Having decided that what she wanted was Station 12,
24 Ms. Clark started talking with another paramedic who worked
25 there, a fellow named Jeff Todd. Jeff Todd was interested in

1 moving to a different station. The new captain who came into
2 Station 12 was not someone with whom he got along. What
3 Ms. Clark apparently did not know is that while she and Jeff
4 Todd were negotiating for some sort of trade, Jeff Todd was
5 receiving a performance evaluation from his captain that was
6 not good and that necessitated the department moving him
7 involuntarily from Station 12 to Station 9.

8 That matters for this reason: As a general rule,
9 within the Tucson Fire Department, two individuals cannot just
10 decide to trade places. If person A works at Station 1 and
11 person B works at Station 6 and they decide they want to swap,
12 that's not allowed. That would violate the rules of
13 assignment. You can imagine why. It would be chaos, it would
14 make it difficult for the department to keep up their staffing
15 levels, and it would create situations where people arrange to
16 work with whom they liked or avoid whom they did not. It
17 would be a disaster. But the point for us really is simply
18 that it is not permitted.

19 So Ms. Clark thought that she had a loophole to the
20 ban on trades between employees. She was under the impression
21 that if a permanently assigned employee went voluntarily to
22 swing shift rather than being transferred to another station,
23 that that position could be filled without going through the
24 bid process. The bid process is the assignment process by
25 which other firefighters or paramedics have the opportunity to

1 bid on a station. But because of Jeff Todd's performance
2 evaluation and the issues that he was having with his captain
3 at Station 12, his supervisors had already decided that he
4 needed to be moved.

5 So when Jeff Todd requested to voluntarily go to
6 swing shift, they denied the request and they placed him at
7 Station 9. They chose Station 9 because that's where the
8 battalion chief was located, and the battalion chief would
9 have the opportunity to evaluate his performance and
10 essentially keep an eye on Paramedic Todd until they were
11 confident that the issues he was having at Station 12 were an
12 isolated event. So when Jeff Todd was moved to Station 9, the
13 position for the paramedic at Station 12 went to the bid
14 process. A paramedic named Scott Billings put his name in for
15 the spot, and he was senior to Ms. Clark so he won the bid.

16 But Ms. Clark still wanted Station 12 even though
17 there was no place for her there. So the next thing that
18 happened is Paramedic Clark's husband, a captain in the fire
19 department, called up Scott Billings, the other paramedic, and
20 said, you know, my wife really wants this spot at Station 12.
21 I'd like you to withdraw your bid. Now, this was alarming and
22 offputting to a number of people in the fire department, and
23 this goes back to the importance in an organization like TFD
24 of rank. For a captain to call a subordinate, a paramedic,
25 and say, I'd like you to give up that spot so my wife can have

1 it, is an abuse of power. It is an abuse of his rank. And
2 nobody involved in the situation had any appreciation for it
3 having happened.

4 Paramedic Billings immediately notified his
5 supervisors and asked, What's going on? I understand I'm not
6 going to get this spot even though I won it because Captain
7 Clark is telling me his wife needs it. It was that phone call
8 that alerted TFD administration to the fact that Ms. Clark's
9 husband had been using his rank to attempt to gain an
10 advantage over the rules of assignment for his wife. But
11 Paramedic Billings, much to his credit, agreed that, while he
12 wanted the spot and wanted the bid, he would delay assuming
13 the spot to give Ms. Clark a little more time at Station 12
14 while they looked for another assignment for her. Nobody
15 required him to do that. He didn't have to. The chiefs did
16 ask him if he was willing because everyone saw that as a good
17 temporary solution and, again, much to Paramedic Billings'
18 credit he agreed.

19 So Ms. Clark was then at Station 12, a station that
20 she believed was compliant with federal law, a station where
21 she was comfortable and the station where she most wanted to
22 be. But at the end of 2012, it was time for Paramedic
23 Billings to fill that spot. In the meantime, Ms. Clark never
24 reapproached Battalion Chief McDonough to ask whether the
25 opportunity at Station 20 was still available. Instead, when

1 Paramedic Billings took the spot that he was entitled to at
2 Station 12, Ms. Clark went back on swing shift. The way swing
3 shift staffing happens is that each day the battalion chief
4 over Battalion 1 and the captain who's stationed there look at
5 the schedule and the people they have available to work and
6 they'll tell you it's a little bit like putting pieces of a
7 puzzle in place. And they have to do this for every shift.
8 And generally what happens is the employees have the
9 opportunity to see their schedule online, they can access it
10 via the Internet, and look to see where they're going to be
11 assigned for a particular shift.

12 Well, Chief McDonough will tell you that while he
13 was doing the staffing process each day, he would frequently
14 get calls from Ms. Clark asking him, Where are you going to
15 assign me? I see there's an opening place at this station;
16 I'd be comfortable there. I see there's a place at that
17 station; I really don't want to go there. And Chief
18 McDonough, even though he didn't have to, he did everything he
19 could to accommodate those requests. If there was an opening
20 at 12, he'd put Ms. Clark at Station 12. If there was an
21 opening at another station where he knew she was comfortable,
22 he'd put her at that station. He tried to avoid stations
23 where he knew she was not comfortable. And the reasons why
24 Ms. Clark may not have been comfortable at any given station
25 were sometimes related to the facilities and sometimes they

1 were related to other issues. We'll talk about those in a
2 minute.

3 So this goes on for a while, with Ms. Clark on swing
4 shift, with Captain McDonough and the other -- Chief McDonough
5 and the other chiefs responsible for staffing doing everything
6 that they could to place her at a station where she would be
7 comfortable. And if she was assigned to a station that she
8 did not like, either because someone other than Chief
9 McDonough did the staffing and was not familiar with her
10 situation or because there were simply no other openings, she
11 would call in sick. She would use sick time or vacation time
12 to avoid having to go to a station that she did not want.

13 And here we should probably talk about something you
14 were told during plaintiff's counsel's opening. He told you
15 that 40 percent of the Tucson Fire Department stations at that
16 time were noncompliant. I will tell you that's not true.
17 There was an investigation that you'll hear about done by the
18 human resources -- a part of the human resources division for
19 the City of Tucson. The person doing this investigation or
20 the assessment of the fire stations did find a number of
21 stations were noncompliant; however, he'll testify here at
22 trial he did not understand the requirements of the law which
23 was relatively new when he went out and he did -- made those
24 assessments. And he'll tell you that looking back at that
25 list today, he would not find the stations noncompliant that

1 he identified at the time.

2 There were no legally noncompliant fire stations
3 when Paramedic Clark was on swing shift. There were fire
4 stations you'll hear that were nicer than others, fire
5 stations that offered more privacy than others. But even
6 Station 9, the station where Paramedic Clark seemingly most
7 did not want to go, even there, there were private rooms.
8 They did not have doors, they had curtains that could be
9 secured, but there were private rooms available. There was
10 also a study room where a piece of paper or a curtain could
11 have been placed over the window and the door locked and that
12 room utilized.

13 But TFD understood that what Paramedic Clark wanted
14 was not the floor of what the law requires. They understood
15 that what she wanted was a greater degree of privacy than the
16 law requires. A lock on the door, which you will not hear
17 anyone tell you is required by the law. And a place where she
18 would not have to clean the space each time she wanted to
19 utilize it, meaning that it would not be used for a different
20 purpose, only for her -- it would only be available for her
21 usage. And despite the fact that that is more than the law
22 requires, you'll hear that TFD worked very hard to accommodate
23 those requests. When they discovered that they had stations
24 that did not have rooms, private rooms with locks on the
25 doors, they went out, they started putting locking on the

1 door. They had the door at Station 9 with the window in it,
2 they changed the entire door over to a solid wood door with a
3 lock. They were making every effort to be responsive to
4 Ms. Clark's complaints.

5 But before that happened, before the door was
6 changed, there was a day in March when Ms. Clark was assigned
7 to Station 9. She called in. She finally got ahold of Chiefs
8 Rodriguez and Fischback. They had the human resources
9 director for the Tucson Fire Department, not for the City
10 itself but specifically for the fire department, in the room
11 on the phone call. Now, JoAnn Acosta, the human resources
12 person was fairly new in that position. And while she had a
13 lot of experience in human resources, she did not have a lot
14 of experience with the fire department. So it is absolutely
15 true that on the phone call with Ms. Clark, Ms. Acosta did
16 mistakenly suggest that she could use the chief's room as a
17 private space when she needed to express breast milk.

18 Very quickly Chiefs Rodriguez and Fischback said no,
19 no, no, no, that will not be appropriate because they
20 recognized, just like Ms. Clark did, that that was not a good
21 solution. But before they could assure Ms. Clark that they
22 did not agree with that particular assessment of the
23 situation, she got angry, she got frustrated, and she said,
24 You must be out of your friggin minds, and she hung up the
25 phone on them. They will tell you that they know she hung up

1 the phone because when they tried to call her back, she did it
2 again. Now, in a lot of jobs, that might be bad, but perhaps
3 not so bad; however, going back to the structure of the fire
4 department, you cannot speak disrespectfully to someone of a
5 higher rank than you. And Ms. Clark was disciplined for it.
6 It was an angry outburst. It was not a formal discipline. It
7 was a verbal. And the chiefs will tell you they thought it
8 was appropriate.

9 Ms. Clark did not go to Station 9 that day. She did
10 not go to Station 9 the entire time she was on swing shift.
11 She never worked at a noncompliant station. She never worked
12 a single shift at a station that did not comply with federal
13 law.

14 Eventually -- or, I'm sorry, during that same
15 conversation or that same time period with Ms. Clark, Chiefs
16 Fischback and Rodriguez also learned that Ms. Clark had
17 sometimes taken a truck out of service so that she could pump
18 breast milk. The taking of a truck out of service meant that
19 if an emergency did happen and a truck needed to be
20 dispatched, a different truck from a neighboring station area
21 would have to respond. So it's not that no one would show up
22 to an emergency, but it would hurt the response time. And one
23 thing that you will hear from members of the TFD
24 administration is, they track their response time very, very
25 closely. They live and die by that response time.

1 So Chiefs Rodriguez and Fischback were alarmed when
2 they found out that Ms. Clark had sometimes taken the truck
3 out of service to pump breast milk. And they realized they
4 needed a solution for the problem, and they wanted to find
5 something that would work for Carrie, for Ms. Clark, and for
6 the department. And you'll hear in their testimony, these
7 were not men who were insensitive to her situation. They may
8 have been unfamiliar with her situation, but they were not
9 insensitive to it. They wanted to find the right place for
10 Ms. Clark, and they realized that the right place might be
11 Station 6.

12 Station 6 made sense. There was a firefighter
13 opening there that had gone unfilled for a period of time
14 despite having been put out in the bid process. And they
15 realized they could fill that spot with Paramedic Clark even
16 though she's a paramedic, and they could do it without having
17 to worry about taking a truck out of service because it so
18 happened that the captain assigned to Station 6 was also a
19 paramedic. So they had one paramedic plus a captain who could
20 act as a paramedic. So for Ms. Clark to be the second
21 paramedic at that station meant that even if she was
22 indisposed because she was pumping breast milk, they still had
23 two paramedics, counting the captain, who could respond to any
24 situation they needed to. It was also a very experienced
25 captain at Station 6 with a rather experienced crew, and he'll

1 tell you that they asked him to place Carrie at Station 6 and
2 told him that they thought the station would be a good fit for
3 her and they thought that crew would be a good fit for her.
4 That captain's name is Ted McDonough. If you're curious, yes,
5 he is the brother of Paul McDonough.

6 So Ms. Clark went to Station 6. And she hadn't been
7 at Station 6 very long before Tucson Fire Department did issue
8 a policy related to nursing room access. The City hadn't had
9 a policy before only because no employee had ever raised the
10 issue. But once Ms. Clark raised it and the City worked to
11 bring all of its stations into line with what they thought was
12 appropriate, even in excess of what the law required, they
13 also issued a policy.

14 Now, Ms. Clark made a number of -- not complaints,
15 because that's not the right word. She mentioned on more than
16 one occasion that there were people who were mocking her over
17 the nursing room policy. Other members of the fire
18 department, not administrators, but other members who were
19 calling it the Carrie Clause or making other comments about
20 the policy and attributing it to her. What you'll hear is
21 that every chief she mentioned that to asked for details and
22 assured her, if that's happening, we want to put a stop to it.
23 We're not going to tolerate that kind of behavior. We're not
24 going to tolerate it from other firefighters.

25 Ms. Clark, for whatever her reasons were, never

1 provided sufficient details for those issues to be
2 investigated. But make no mistake, they would have been.
3 They would have been investigated and they would have been
4 addressed. And that's what you'll hear from every single
5 administrator who was aware that Ms. Clark felt singled out.
6 They wanted to help her from start to finish.

7 Maybe because of those comments, maybe for other
8 reasons, once she was at Station 6, Paramedic Clark kind of
9 isolated herself from her coworkers. To what, if any, extent
10 that had in terms of making the situation worse or affecting
11 her perception of the events, I'm not sure, but I have to
12 think that it played a role in how she saw her place in the
13 fire department at that point. You'll hear a lot about
14 Ms. Clark's perception of these events, how she felt she was
15 being treated, the motives that she ascribed to people whom
16 she was dealing with. But how much of that was her perception
17 versus the reality is one of the questions you have to decide
18 in this case. You'll hear from a number of other witnesses
19 that they wanted to do everything they could to find the right
20 place for her to make her happy.

21 After a period of time at Station 6, Ms. Clark moved
22 to a position as a fire inspector. Shortly after moving over
23 to fire inspection, she went on her second maternity leave.
24 In November of 2014, she returned from her maternity leave and
25 she resumed her spot in fire prevention. And I'm sorry,

1 leading up to her maternity leave, she wanted to trade shifts
2 with her husband. And the department didn't allow that. They
3 didn't allow it because her husband was a captain and she was
4 a paramedic. And even though her husband was also a paramedic
5 and could fulfill her duties, they care about your rank. And
6 so asking firefighters and paramedics to work as equals with a
7 captain creates a situation that TFD was not prepared to
8 allow. Having one captain supervise another captain is a
9 situation that TFD was not prepared to allow. The Clarks were
10 told those trades were inappropriate and that they would not
11 be permitted.

12 And I'm sorry, I also left out, I should address the
13 drill that went on before Ms. Clark went over to fire
14 prevention.

15 So while she was at Station 6 under the supervision
16 of Captain Ted McDonough, Ted McDonough had a firefighter who
17 wanted -- who was training to be an engineer. And in the fire
18 department an engineer is the person who controls the
19 hydraulics of the water. So when you actually turn the water
20 on, he's the guy who controls the pressure and, honestly, I
21 don't know what all goes into it but I can guess.

22 So Tyler McKendrick was getting ready to study --
23 or, was getting ready to take his engineer test. The squad or
24 the crew was on the way back, Captain McDonough saw a park and
25 decided it would be a good place to permit Tyler McKendrick to

1 have an opportunity to practice running the hydraulics on the
2 fire engine. So he told everyone to stop. He made up a
3 scenario which you'll hear is a common thing that captains do
4 when they want to drill their crew.

5 Drills happen all the time for a number of reasons.
6 They might happen when you get a new crew member, they might
7 happen when someone comes back from an injury, they might
8 happen just because it's been a while since you've run a
9 drill. Captains run drills in order to see how their team
10 works together and to make sure that everyone is properly
11 fulfilling the functions that they're supposed to. So Captain
12 McDonough made up a scenario when they stopped at the park
13 that the regular engineer had been injured which is why Tyler
14 McKendrick needed to run the hydraulics.

15 Now, McKendrick did not know that this drill was
16 going to happen, and Captain McDonough was doing it for the
17 benefit of allowing him to practice in advance of his test.
18 Part of the drill was that Carrie or Ms. Clark, along with
19 Captain McDonough, would drag the hose and Tyler would run the
20 water. As they were dragging the hose into the park, Chief
21 McDonough indicated that he wanted to pull the hose over to a
22 particular section of the park.

23 Ms. Clark got angry, frustrated, she threw down the
24 hose, and she walked away in tears. Captain McDonough called
25 to her asking what was wrong. She refused to turn around, she

1 refused to acknowledge him, she just kept walking. Captain
2 McDonough will tell you that in all the years he's been a
3 firefighter -- and it's been many, he's never had a paramedic
4 or a firefighter act that way on his crew. He was so taken
5 aback by the behavior that he actually called his supervisors
6 and then waited in the park for them to arrive so he could
7 apprise them of the situation and someone could talk to
8 Ms. Clark and find out what was going on.

9 Now, maybe the frustration was borne of feeling like
10 she had been singled out. Captain McDonough never had the
11 opportunity to find out. He'll also tell you that if what he
12 had wanted was a severe discipline for the fit that Ms. Clark
13 threw that day, he could have had it. He could have pushed
14 for a more serious discipline for that incident because of the
15 level of insubordination involved. But he didn't. Captain
16 McDonough, like everyone else who supervised in Ms. Clark,
17 understood that she was going through a difficult time. And
18 while he wanted to address the behavior, he did not want to
19 belabor the point.

20 Ms. Clark went on her second maternity leave. When
21 she returned, she went back to fire prevention. You'll hear
22 that in fire prevention one of the things that happened was
23 that she had a disagreement with another inspector named Nikki
24 Sprenger, whom you'll hear from. Ms. Clark apparently
25 believed that Ms. Sprenger's inspection practices or the job

1 that she was doing was inadequate. And Ms. Sprenger overheard
2 her discussing it, she raised the issue with Ms. Clark, and
3 Ms. Clark was disciplined as a result of that interaction.
4 One of her assignments in fire prevention was not to inspect
5 her equal inspectors.

6 The other thing that you have to appreciate as you
7 hear the evidence in this case is that for whatever reason,
8 maybe from that first phone call, Ms. Clark never warmed up to
9 JoAnn Acosta, the HR person for the Tucson Fire Department.
10 And when I say never warmed up, I am understating the matter
11 dramatically. Ms. Clark did everything that she could to
12 avoid Ms. Acosta.

13 You heard already about this \$150 club, the \$150
14 paramedic pay that plaintiff alleges she was deprived of as an
15 act of retaliation. What you'll actually hear is that in
16 order to receive her paramedic pay, all Ms. Clark had to do
17 was fill out a form requesting it; the same form that every
18 other TFD paramedic who changes positions has to fill out.
19 Why didn't she fill it out on time? Because she refused to go
20 to Ms. Acosta's office and pick it up from her. As a result,
21 the form was late and her submission was therefore not active
22 until two weeks later. So Ms. Clark missed one pay period's
23 worth of paramedic pay because she refused to go pick up a
24 piece of paper from the HR manager.

25 Speaking of Ms. Acosta, I can't stand here and tell

1 you that everything every person ever said to Ms. Clark was
2 ideal. Ms. Acosta will tell you that she regrets saying to
3 Ms. Clark your breast pumping -- your breast milk pumping
4 seems excessive. Ms. Acosta will tell you that the words just
5 came out of her mouth because she was thinking about her own
6 experience when she had a child and was pumping breast milk.
7 She wasn't really saying it as a human resources manager,
8 though she should have kept that hat on. She was saying it
9 based on personal experience. If she could take it back, she
10 would. Obviously she can't. And to the extent that that
11 adversely affected the way Ms. Clark viewed Ms. Acosta and
12 made the situation more difficult, I think you'll hear that
13 she regrets that very much.

14 But both Ms. Clark and Ms. Acosta are grownups. And
15 so even after a comment like that said in error, you still
16 have to be able to work with people. You still have to be
17 able to work out these issues. You need to go talk about it
18 like an adult, not hide from the person who's responsible for
19 all of the human resources administration that goes on in your
20 office.

21 You've also heard that Ms. Clark was transferred out
22 of fire prevention, which is true. You'll hear Chief
23 Critchley, former Fire Chief Critchley talk about the
24 directive he was given to shrink the size of fire prevention
25 and about his efforts to find a place for Ms. Clark where she

1 would really be happy, where she could excel in the fire
2 department. He has this infectious enthusiasm that you'll get
3 when he takes the stand. He tells everyone he meets if you
4 want to be a firefighter, there's a place for you. In fact,
5 it doesn't matter what you want to do in life, there's a place
6 for you at the fire department. You want to be a lawyer, you
7 can do it at the fire department. He is passionate about
8 finding a place where every person under his charge can be
9 successful.

10 And that extended to Ms. Clark, but he'll tell you
11 that he moved her out of fire prevention and he had a number
12 of reasons for doing it. One of them was his need to shrink
13 that division altogether. When Ms. Clark was moved out of
14 fire prevention and told she was going back out to operations,
15 she went back on light duty. During that time, there was an
16 issue of her -- whether she could use flex time, so she was
17 assigned to Station 1, which is where the fire department
18 headquarters is. And there was -- she raised the issue of
19 whether she could use flex time to come in at 6 and leave
20 early and she wanted to work out at a station other than the
21 one where she was assigned.

22 The administration said no because people on light
23 duty assignments have to receive work every day from the
24 people who were supervising their light duty. And if you're
25 here at 6, there's no one here to give you work. Light duty

1 people are not allowed to flex their time in the way that
2 Ms. Clark tried to.

3 Firefighters are also generally required to work out
4 at the station where they're assigned. They don't get to work
5 out at a different station. They don't get to drive across
6 down, leave work early, drive across town and work out
7 someplace more convenient. They don't get to go work out at a
8 nicer gym. And you would be hard-pressed to find a nicer gym
9 than the one at Station 1. That facility is absolutely
10 amazing. You'll hear that it is a state-of-the-art gym and
11 the best one that TFD has. But Ms. Clark didn't want to work
12 out there. She wanted to work out someplace more convenient,
13 and the fire department said no, that's not within our rules.

14 So some of that probably sounds petty. And some of
15 the rules are very specific and they sometimes require
16 responses that are not consistent with what people would do in
17 any other situation. But what you'll hear consistently from
18 every person who testifies is that the fire department
19 administrators did everything they could for Ms. Clark. They
20 did everything they could within the rules and they wanted her
21 to be successful.

22 Ms. Clark was the first person to bring up this law.
23 This requirement has only been in place since the passage of
24 the Affordable Care Act. So at the time Ms. Clark brought it
25 up, it was a new requirement that the fire department had not

1 yet dealt with. And they hadn't dealt with it despite the
2 fact that they had other women in the department who were
3 breastfeeding even at that time. But Ms. Clark was the first
4 person to raise the issue. She was not, however, the first
5 female firefighter to breastfeed on the job. You'll hear that
6 there were female firefighters at TFD pumping milk on the job
7 long before it was cool and certainly long before there was a
8 law that mandated they have time to do it. What you're going
9 to hear consistently throughout this trial is that the City of
10 Tucson is actually one of the most progressive family friendly
11 employers in Arizona. The City has a paid maternity leave
12 law. The City has a number of female firefighters who were
13 expressing breast milk on the job more than a decade ago.

14 One of them whom you'll hear from is Assistant Chief
15 Laura Baker. Assistant Chief Baker also happens to be one of
16 the highest ranking female firefighters in the state of
17 Arizona. And she's going to talk, along with another female
18 TFD employee are going to talk with you about the way the
19 department actually made it possible for them to both have
20 families, to raise their kids the way they wanted to, and to
21 still do the job that they love: saving lives. You'll hear
22 testimony from both of them and they'll tell you that the
23 people they worked with were fantastic about the situation.
24 They had developed good relationships with their coworkers.
25 So when they needed a little help, when they needed a little

1 extra time or someone to step in, they didn't have any
2 difficulty finding people who were willing and happy to help.
3 Because that's how the fire department operates. If you make
4 yourself a home there, they will treat you like a family.

5 The first female Supreme Court Justice Sandra Day
6 O'Connor said it's good to be the first woman, but you don't want
7 to be the last. And that's something that you'll hear
8 Assistant Chief Baker takes to heart. The Tucson Fire
9 Department has made it possible for her to have everything in
10 life and she's trying to give that back by running a camp for
11 girls trying to encourage them to pursue nontraditional
12 careers in police and fire service. She's a great example of
13 what TFD actually does with women when they give the
14 department the opportunity to work for them. How do we know
15 that the fire department does a great job? They have a
16 100 percent retention rate for women who return from maternity
17 leave. You won't find that in most industries for most
18 employers. 100 percent of the women in the last 10 years who
19 have taken maternity leave at the fire department have come
20 back at the end. They don't quit, they don't retire. They
21 return. And most of them return and have another child.

22 That's one way that we know that not only does the
23 fire department not discriminate against people because
24 they're women or because they're pregnant or because they're
25 breastfeeding, the fire department actually goes above and

1 beyond to make life choices possible for its female employees.
2 So this case is not just about what Ms. Clark believes the
3 fire department should have done for her and didn't; it's
4 about what the fire department does for its female employees.
5 There may not be many, but they stay in that job until they
6 retire because the fire department makes it possible to be
7 women and to be firefighters and to have families.

8 You have a difficult job in this case. You have to
9 try to discern the motives of people who were making
10 decisions. In order to do that, I ask that you pay close
11 attention to all the witnesses who appear before you. You
12 have to decide what their credibility is, what they stand to
13 gain from the lawsuit, what they stand to lose, what their
14 motivations are for testifying, what their motivations were
15 for the decisions that they made. And I'm confident that at
16 the end of this trial, having heard from a number of TFD
17 employees as well as the administrators, the chiefs, the
18 supervisors who were responsible for doing what they could for
19 Ms. Clark, I am confident that you will conclude that the fire
20 department did what they could for Ms. Clark. And they were
21 frustrated and upset when it wasn't good enough.

22 You'll conclude that not only did the fire
23 department meet the minimum of the law, but that they went
24 above and beyond. Because the reality is most of life, most
25 of what happens, it's all about what we make it. If you

1 create great relationships with your coworkers, they're going
2 to step in for you when you need help. If you handle
3 situations you're involved in a mature, communicative way,
4 you're going to find reception on the other side. Ms. Clark
5 did not make the best of what TFD had to offer her. But what
6 they offered her complied with the law and more importantly
7 complied with basic standards of fairness and decency. Thank
8 you.

9 THE COURT: Thank you, Ms. Waters.

10 So members of the jury, we're going to take our
11 evening recess. Please continue to follow the admonition that
12 I just gave you a little bit ago when I read to you the
13 preliminary jury instructions. Have a good evening.

14 You can leave your items, your jury badge, I guess
15 you don't have your badges yet. You're going to get your jury
16 badges. You can leave those -- wear those outside of the
17 courtroom and when you come back into the courthouse, but you
18 can leave your notebooks and other materials in the jury room
19 if you like. And we do lock the courtroom when we don't have
20 court, so you can also leave things on your chairs if you'd
21 like. So have a good evening and we will see you tomorrow at
22 9:00. And Sandy will show you the jury room and where you'll
23 be convening and how to get into that room.

24 (Jury panel excused at 5:03 p.m.)

25 THE COURT: The record may reflect the absence of

1 the jury and we will stand at recess then until 9:00 tomorrow
2 morning. Have a good evening.

3 (Proceedings concluded at 5:03 p.m.)

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C E R T I F I C A T E

I, Cheryl L. Cummings, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Dated this 5th day of April, 2019.

/s/Cheryl L. Cummings

Cheryl L. Cummings, RDR-CRR-RMR-CRC-CRI
Federal Official Court Reporter